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Note verbale dated 2 May 2006 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the President of the General Assembly and has the honour to convey herewith a note dated 2 May 2006 related to the candidature of South Africa to the Human Rights Council and the aide-memoire outlining South Africa's voluntary pledges and commitments with respect to the promotion and protection of human rights (see annex).

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Annex to the note verbale dated 2 May 2006 from the Permanent Mission of South Africa to the United Nations addressed to the President of the General Assembly

Since its return to the international community in 1995, the South African Government has played an active role within the United Nations Commission on Human Rights. In this short time, South Africa chaired the fifty-fourth session of the Commission on Human Rights in 1998, and served as a Vice-Chair of the fifty-eighth session in 2002 as well as serving as the human rights coordinator on behalf of the African Group during the fifty-ninth session in 2003. South Africa has also played a cardinal role in the processes that created the Human Rights Council throughout 2005, which culminated in the country's Permanent Representative to New York serving as one of the Co-Chairs and assisting the President of the General Assembly in the creation of the Human Rights Council. Additional to the promotion and protection of human rights and fundamental freedoms, South Africa strongly upholds the principle of fulfilment of human rights consistent with the provisions of international human rights law.

The Permanent Mission of the Republic of South Africa to the United Nations herewith encloses an aide-memoire outlining South Africa's voluntary pledges and commitments with respect to the promotion and protection of human rights as a requirement of General Assembly resolution 60/251 of 15 March 2006 (see enclosure), and would appreciate the valuable support of the Permanent Missions of Member States to the United Nations at the elections for the Human Rights Council to be held during the sixtieth session of the General Assembly on 9 May 2006.

Enclosure

Aide-memoire in support of South Africa's candidature to the Human Rights Council

Following the first democratic elections in 1994, South Africa returned to the international community in 1995 to assume its rightful place among the community of nations. The experience in this relatively short period has been richly rewarding and South Africa has played a key role in the shaping of the international human rights agenda, including the constant development of international human rights and humanitarian law. A central consideration in South Africa's foreign policy is the commitment to the promotion, protection and fulfilment of human rights and fundamental freedoms and the advancement of democracy.

South Africa's Constitution and Bill of Rights

The first democratic elections of 1994 placed South Africa firmly on the path of constitutional democracy. The Republic of South Africa Constitution Act 108 of 1996 is the supreme law of the land. In keeping with the international Bill of Human Rights, the South African Constitution entrenches and constitutionally guarantees all the universally recognized human rights and fundamental freedoms.

Whereas the South African democracy is relatively young, the heroic struggle by South Africans for democracy, social justice and human rights and fundamental freedoms is very old and extends over a period of 350 years. During this period South Africans were subjected to successive repressive regimes ranging from conquests, colonialism and the worst form of institutionalized racism and racial discrimination, namely, apartheid.

The 1994 democratic elections in South Africa created a political space for all the rights enumerated in the Constitution to be practically enjoyed. In this regard, the political vision of the democratic government in South Africa is predicated on a fundamental principle which affirms the inextricability of economic, social and cultural rights on the one hand, and civil and political rights on the other. Also consistent with the fundamentals of the international human rights law, South Africa strongly upholds the notion of (i) promotion, (ii) protection and (iii) fulfilment of all human rights and fundamental freedoms. South Africa's human rights value system is founded on this notion. South Africa lodged its National Action Plan for the Promotion and Protection of Human Rights at the United Nations on 10 December 1998.

The South African Constitutional Court decisions have produced significant judgements and adjudications which underline the justiciability of the economic, social and cultural rights. South African case law is currently being used at the international level to give impetus and momentum to the strengthening of the international human rights instruments dealing with economic, social and cultural rights.

Between 1995 and 2006 South Africa has been a member of the Commission on Human Rights on three occasions. In this period, South Africa chaired the fifty-fourth session of the Commission on Human Rights in 1998, became a Vice-Chair at the fifty-eighth session in 2002 and acted as a coordinator on human rights issues on behalf of the African group during the fifty-ninth session in 2003.

Institutions supporting South Africa's democracy

National institutions, established in terms of the constitutional provisions to support constitutional democracy in the country, are actively involved in the monitoring of South Africa's compliance with respect to the implementation of international human rights instruments of which South Africa is a party.

The South African Constitution of 1996 makes provision, through its chapter 9, for the establishment of the following State institutions to strengthen constitutional democracy in the Republic of South Africa. These institutions are independent and subject only to the Constitution and Parliament:

Public Protector

South African Human Rights Commission

Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities

Commission for Gender Equality

Auditor-General

Electoral Commission

Undertakings/pledges

It should be underlined that South Africa by its very nature and for historical reasons is among the countries within the United Nations that takes the international human rights agenda very seriously. As a member of the new Human Rights Council, the South African Government undertakes to abide by the following principles:

1. Continue to receive the Special Procedures and Mechanisms of the Commission on Human Rights (consistent with its decision of 22 October 2002) wishing to visit the country in keeping with their various mandates. Since the issuance of this open invitation, the following mechanisms have visited South Africa without any restrictions or impediments:

Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples

Working Group on Arbitrary Detentions

Special Rapporteur on the sale of children, child pornography and child prostitution

Special Rapporteur of the African Commission on Human and People's Rights on the conditions of prisons and detention in Africa

2. Respect for the integrity and dignity of the Office of the United Nations High Commissioner for Human Rights. The South African Government will work to ensure that the High Commissioner for Human Rights and her personnel are above the manipulation and influences of States.

3. Continue contributing financially to OHCHR. Such contributions shall not be in any way earmarked, as the earmarking of funding to OHCHR has a limiting effect on the operations of OHCHR.

4. Continue to support important funds and programmes within OHCHR aimed at advancing the cause of human rights globally, such as the Voluntary Fund for Victims of Torture, the Voluntary Fund for the Victims of the Contemporary Forms of Slavery and the recently established United Nations Democracy Fund.

5. Continue with its unwavering position to advocate for a balanced sustainable development programme within the human rights framework as underlined in the Vienna Declaration and Programme of Action as well as General Assembly resolution 48/141. In this regard South Africa will be one of the chief proponents of a balanced agenda of the Human Rights Council which reflects, among others, the primacy of achieving the realization of the right to development as well as moral human rights issues such as the eradication of poverty and underdevelopment. As will be recalled, South Africa hosted the World Summit on Sustainable Development in Johannesburg in November 2002, whose Programme of Action is globally regarded as an instructive document for achieving sustainable development.

6. Work to ensure that one of the first preoccupations of the substantive sessions of the Human Rights Council will be to update the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, through an amendment protocol, placing the right to development on a par with all other rights enumerated in these instruments.

7. Work to promote, within the Human Rights Council, a common understanding that human rights can only be practically enjoyed through an effective partnership with all the relevant stakeholders at all levels.

8. Continue to submit country reports to the human rights treaty monitoring bodies. To this end, South Africa will present its country reports to the Committee on the Elimination of Racial Discrimination and the Committee against Torture during 2006. South Africa has also presented, during 2005, its country report to the African Commission on Human and Peoples' Rights.

9. Undertake to submit in the near future a National Action Plan exclusively covering the area of racism and racial discrimination as required by the Durban Declaration and Programme of Action. As will be recalled, South Africa hosted the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance from 31 August to 8 September 2001.

International instruments to which South Africa is a State party

The South African Government signed most of the international human rights instrument on 10 December 1995, and have since ratified/acceded to the following instruments:

International Covenant on Civil and Political Rights

Rome Statute of the International Criminal Court

International Convention on the Elimination of All Forms of Racial Discrimination

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Convention on the Elimination of All Forms of Discrimination against Women

Convention on the Rights of the Child

Optional Protocol to the International Covenant on Civil and Political Rights

Second Optional Protocol to the International Covenant on Civil and Political Rights

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child pornography and child prostitution

Optional Protocol to the Convention on the Rights of the Child on the use of children in armed conflict

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

Regional instruments to which South Africa is a State party

South Africa is also a State party to the following regional (African) human rights instruments:

African Charter on Human and People's Rights

African Charter on the Rights and Welfare of the Child

Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa

South Africa has volunteered and is next in line to be peer-reviewed under the African Peer Review Mechanism on the New Partnership for Africa's Development.

Commitment to international human rights instruments

South Africans are serving or have served on the following treaty monitoring bodies:

Committee on the Elimination of Racial Discrimination

Committee on the Rights of the Child

Committee on the Elimination of Discrimination against Women

African Commission on Human and People's Rights

South Africa plays a key role in advocating the agenda for development through intergovernmental structures of the Non-Aligned Movement and the Group of 77 and China.

Instruments in the process of ratification

The South African Government is in the process of ratifying the following important human rights instruments:

International Covenant on Economic, Social and Cultural Rights

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment